

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the
Revocation of the
Family Foster Care
License of Joyce Arnzen,
Maplewood, Minnesota

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson on June 19 and 29, 1989, at the Office of Administrative Hearings, Minneapolis, Minnesota. The record on this matter was closed on July 14, 1989, the date of receipt of the last post-hearing memorandum.

Becky A. Moshier, Certified Student Attorney, and Kristi S. Wendorff, Assistant Ramsey County Attorney, 350 St. Peter Street, Suite 400, St. Paul, Minnesota 55102, appeared on behalf of the Ramsey County Community Human Services Department (Agency). Steven M. Patrow, from the firm of McCullough, Dyrud & Smith, Attorneys at Law, 905 Parkway Drive, St. Paul, Minnesota 55106-1098, appeared on behalf of the Licensee, Joyce Arnzen.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of the Minnesota Department of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Charles C. Schultz, Acting Commissioner of the Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3815.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are: (1) whether the Licensee has violated Minn. Rules pts. 9545.0090 and 9545.01601 and (2) if a violation is proved, the appropriate action to take against Ms. Arnzen's foster care license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Joyce Arnzen is a 60-year-old licensed foster care provider who resides at 1915 Barclay, Maplewood, Minnesota. Ms. Arnzen has been providing foster care for over 20 years, primarily for children with Down's Syndrome. These special needs children require extra time and effort on Ms. Arnzen's part due to their handicapping condition. At the time this matter arose, Joyce Arnzen was caring for three children with Down's Syndrome.

2. Until the present time, there have not been any complaints concerning Ms. Arnzen's care of foster children or allegations that foster care rules have been violated.

3. in January of 1989, one of the three children Ms Arnzen was caring for was T. J., a 15-year-old male who was five feet tall and weighed 108 pounds. T. J. had Down's Syndrome but functioned at a high level.

4. Occasionally, Ms. Arnzen had a difficult time disciplining 1. J. and he would get very angry, striking her with his fists. Ms. Arnzen suffered bruises on her arms several times because of T. J.'s "aggressiveness".

5. Joyce Arnzen had a chair in her living room which was next to the entrance to her kitchen. Because she did not want her cat to climb onto the chair, Ms. Arnzen usually placed a "cat board" on the seat of the chair when she was not at home. This board was a 12" x 12" piece of plywood with approximately 30 carpet tacks pounded through the board which protruded through the other side. The cat would not climb on top of this uncomfortable surface. When Ms. Arnzen was at home, the board was placed beside the chair.

6. On Friday, January 6, 1989, Joyce Arnzen was in the kitchen with T. J. preparing him a sandwich to eat. When the sandwich was given to T. J., he decided he did not want it. Ms. Arnzen told him that if he did not eat that sandwich he would not get anything else to eat at that time. T. J. then became angry and smashed the sandwich on the floor. He then began hitting Ms. Arnzen with his fists. Ms. Arnzen backed up, while being hit by T. J., into the entrance to the living room. Because T. J. continued to strike her, she picked up the "cat board" and held it in front of her to thwart the blows, T. J. sustained puncture-type injuries on one of his forearms when he attempted to hit Ms. Arnzen but struck the board instead.

7. The following Monday, January 9, 1989, two of T. J.'s teachers noticed the scabbed-over puncture wounds on his arm and sent him to the school nurse, Donna Kriegler. At that time, T. J. also had a scratch on his forehead approximately two inches long which was healed over. T. J. told Ms, kriegler that Joyce Arnzen had hit him with a board with needles in it. After learning how the injury occurred, Ms. Kriegler called Ramsey County Child Protection Services.

8. The following day, January 10, 1989, T. J. was again interviewed by the school nurse and child protection workers. At that time, he stated that Joyce Arnzen had held the "cat board" up in front of her to avoid being hit.

9. When Joyce Arnzen was first interviewed by child protection workers,

she denied using the "cat board" during the confrontation with T. J. However, she later admitted that she may have used the board for protective purposes.

10. On January 20, 1989, T. J. was removed from Joyce Arnzen's home. However, the two other Down's Syndrome children were allowed to remain. T. J. had been in Ms. Arnzen's care for five years.

11. On March 23, 1989, the Minnesota Department of Human Services informed Joyce Arnzen that her foster care license was being revoked. Ms. Arnzen filed a timely appeal and this hearing resulted.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. 14.50 and 245.08. The Notice of Hearing issued by the Agency was proper in all respects and all substantive and procedural requirements of law and rule have been complied with.

2. The Agency has demonstrated reasonable cause to revoke Joyce Arnzen's foster care license pursuant to Minn. Stat. 245.08, subd. 3. Consequently, the burden of proof shifts to the Licensee to demonstrate by a preponderance of the evidence that she is in full compliance with the rules at issue.

3. The applicable portions of Minn. Rules pts. 9545.0090 and 9545.0160 read as follows:

9545.0090 PERSONAL QUALITIES OF FOSTER FAMILY HOME APPLICANTS.

FFH applicants shall be kind, mature, and responsible people with a genuine liking for children. They shall possess consistent and healthy methods of handling the life-style unique to their own families.

Reason: Children who must live apart from their own homes are uniquely in need of stable, understanding families. Many children needing placement are emotionally, mentally, or physically handicapped. These children need extra understanding and parenting to cope with their problems.

A. Satisfactory compliance: An FFH license shall not be issued or renewed where any person (except foster children) living in the household has any of the following characteristics:

(1) a conviction for, or admission of, or substantial evidence of an act of assault, or child battering, or child abuse, or child molesting, or child neglect.

B. Satisfactory compliance: in order to protect children in foster care and assure them the maximum opportunities for growth and development, each family caring for children shall be evaluated on the following essential elements:

(6) have the ability to deal with anger, sorrow, frustration, conflict, and other emotions in a manner which will build positive interpersonal relationships rather than in a way that could be emotionally or physically destructive to other persons;

(7) have the ability to give positive guidance, care, and training to a child according to his stage of growth, special abilities, and limitations;

(8) have the ability to use discipline in a constructive rather than destructive way; and

(14) be able to constructively resolve problems when difficulties arise.

9545.0160 PROHIBITION AGAINST ABUSE.

No child shall be subjected to physical or psychological abuse .

Reason: Although families differ in their approach to discipline, harsh or threatening methods are particularly damaging to children in foster care. Discipline should be defined as an overall plan for teaching acceptable behavior; punishment is, more narrowly, negative reinforcement for unacceptable behavior.

Satisfactory compliance:

B. No child in care shall be subjected to unusual, severe, or cruel punishment.

1. Corporal punishment is prohibited. Corporal punishment includes but is not limited to hitting, slapping, spanking, pinching, shaking, kicking, or biting.

4. Child abuse is defined in Minn. Stat. 626.556 in terms of "sexual abuse", "neglect", or "physical abuse". The term "physical abuse" is defined in subdivision 2(d) of that statutory section as "any physical injury inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical injury that cannot reasonably be explained by the child's history of injuries

5. Minn. Stat. 245.07, subd. 3 provides that, "The Commissioner may suspend, revoke, or make probationary a license if a licenseholder fails to comply fully with applicable laws or rules." Subdivision I of that section provides that, "When applying sanctions authorized under this section, the Commissioner shall consider the nature, chronicity, or severity of the

violation of law or rule and the effect of the violation on the health, safety or rights of persons served by the program."

6. The Licensee has failed to meet her burden to show full compliance with Minn. Rules pt. 9545.0090A.(1). The Judge has concluded that the record supports a finding of "physical abuse" within the meaning of Minn, Stat. 626.556, subd. 2(d). The Licensee has proved compliance with the remaining rules at issue.

7. For the reasons set forth in the Memorandum below, the Judge concludes that license revocation is not appropriate herein, Rather, some lessor disciplinary action in conjunction with more selective placement by Ramsey County is appropriate.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Order revoking Joyce Arnzen's foster care license be rescinded. The Judge further recommends that a lessor disciplinary sanction be imposed.

Dated this 4th day of August, 1989.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped.

MEMORANDUM

As the Findings of Fact above state, the Judge has been persuaded that Joyce Arnzen only used the "cat board" to protect herself from being struck by T. J. rather than as an offensive weapon to strike back at him. Although T. J. initially stated to the school nurse that Ms. Arnzen had struck him with the board, he later retracted that story and admitted that she only used the board as a protective device. At the time this incident occurred, another child with Down's Syndrome was present in the kitchen, T. B. In an interview with Ramsey County child protection workers, T. B. did state and demonstrate that Ms.

Arnzen hit T. J. with the board. However, whether Joyce Arnzen affirmatively struck T. J. or merely held the board out in front of her to thwart off his

blows is a difficult distinction for anyone to make. It must be, in part, determined by the credibility and character of the "actor". Because of Joyce Arnzen's long history of complaint-free foster care, testimony concerning observations of her appropriate and loving care of foster children, and Ms. Arnzen's sincere demeanor on the stand, the Judge has concluded she did not assault T. J. with the board.

The real issue in this case was whether or not Joyce Arnzen struck T. J. with the "cat board". The Judge has found that "physical abuse" has been proved despite the fact that there was no assault by Ms. Arnzen. Joyce Arnzen intended to use the board as she did; the injuries that resulted to T. J. were not "accidental". The Agency additionally raised the issues of whether an incident of hair-pulling had occurred and whether the scratch on T. J.'s head was caused by Joyce Arnzen. However, there is insufficient evidence in the record to make a determination as to the genesis of the scratch. Further, the Judge declines to make a finding concerning the hair-pulling based on a single statement by T. J. to an interviewer when the focus of the interview was on the alleged physical abuse. Joyce Arnzen denied ever pulling T. J.'s hair,

What the record in this matter shows is that Joyce Arnzen was caring for a foster child whom she could not adequately control. The testimony of witnesses other than Ms. Arnzen established the fact that she had been struck, and bruised by T. J. on several occasions previous to the kitchen incident. She, unfortunately, did not make the caseworker aware of the problems she was having. The Judge has concluded that this single incident of bad judgment on Joyce Arnzen's part does not warrant the revocation of her foster care license. Obviously, the fact that the Agency permitted two foster children to remain in her home subsequent to their finding of substantiated child abuse shows that they regarded this as an "isolated incident". Consequently, the Judge has recommended that a lesser disciplinary sanction be imposed and that Joyce Arnzen be allowed to continue as a foster care provider, perhaps with more selective placements.

P.C. E.

